IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Wednesday, the Twenty Ninth day of September, two thousand and four

Present:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.14433 OF 2002

Between:

The Nizam Sugars Limited, Represented by its General Manager, Lachayyapet, Seethanagaram Mandal, Vizianagaram District.

…Petitioner

And

1. Chelikani Sri Ranganayakulu s/o late Gopala Rao, R/o D.No.50-43-10, P & T Colony, Visakhapatnam.
2. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam, Visakhapatnam District.

…Respondents

Petition under Article 226 of the Constitution of India praying that in

the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ, order or direction more particularly one in the nature of certiorari calling for the records relating to M.P.No.58 of 2000, dated 20-2-2002, on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam and quash the same as arbitrary, illegal and without jurisdiction.

For the Petitioner: Mr.N.Vasudeva Reddy, Advocate

For the Respondent No.1: Mr. A.Srinivasa Sarma, Advocate.

For the respondent No.2 : G.P., for Labour

The Court made the following :

ORDER:

The petitioner questions the order dated 20-2-2002 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in M.P.No.58 of 2000.

The first respondent herein was an Ex-employee of the petitioner-Nizam Sugars Limited who took voluntary retirement under Voluntary Retirement Scheme (in short V.R. Scheme), introduced by the petitioner in 1996. As per the Scheme, the petitioner paid the entire exgratia payable to the first respondent. It is stated that after retirement under V.R. Scheme, the first respondent made a demand vide his notice dated 6-9-1996 stating that the management granted him exgratia at the time of voluntary retirement by calculating daily wages after taking into account the last drawn wages per month divided by 30 days instead of 26 days and thus, there is a difference

in payment of exgratia amount of Rs.31,447.80 Ps., payable to him. As no reply was given to the said notice dated 6-9-1996, the first respondent filed an application in M.P.No.58 of 2000 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam under Section 33-C(2) of Industrial Disputes Act for payment of differential exgratia amount of 45 days under Voluntary Retirement Scheme. The said application was allowed by an order dated 20-2-2002, against which, this Writ Petition is filed.

It is the case of the first respondent that the petitioner company has incorrectly calculated the exgratia amount payable to him. As per the V.R. Scheme, daily wages are to be ascertained by dividing the last drawn monthly wages by 26 days, but not by 30 days as calculated by the management.

The brief facts of the case are as follows:- The petitioner company introduced V.R., Scheme for its employees, inviting applications from the eligible employees. The application of the first respondent was accepted and he was retired under Voluntary Retirement Scheme-II in the year 1996. As per clause-3 of the Scheme, for the purpose of calculating the number of years of completed service, the method as provided under the payment of Gratuity Act will be followed. Under Clause-6 of the said V.R., Scheme, the employees are entitled for the following benefits:-

(a) Entire balance in employee's Provident Fund Account including the Company's contribution as per the EPF., Trust Regulations.

(b) Cash equivalent of accumulated Earned Leave and cash equivalent of 50% of accumulated Sick Leave standing to the credit of the employee as on the date on which the V.R., is accepted.

(c) Gratuity as per Payment of Gratuity Act.

d. Exgratia payment equivalent to 45 days emoluments (Basic and DA) for each completed year of service…..

There is no dispute in payment of all other benefits under the V.R.,

Scheme except the differential payment of exgratia equivalent to 45 days emoluments for each completed year of service.

The petitioner company paid a sum of Rs.2,09,657/- towards exgratia amount of 45 days pay for each completed year of 37 years service. Aggrieved by the said quantum of amount, the first respondent issued a notice for the differential payment of exgratia amount stating that as against the entitlement of Rs.2,41,104.80 Ps., the petitioner company paid a sum of Rs.2,09,657/- only and the differential amount payable to the first respondent under the V.R., Scheme is Rs.31,447.80 Ps. As there was no response from the petitioner company for the demand notice issued by the first respondent dated 6-9-1996, the first respondent filed M.P.No.58 of 2000 under Section 33-C(2) of Industrial Disputes Act before the Second respondent. The differential amount calculated in the said petition is as follows:- Salary Rs.3,765-00 X exgratia 45 days X number of years 37 divided by 26 days = Rs. 2,41,104-80, first respondent received Rs.2,09,657-00 and balance payable is Rs. 31,447-80. For the said statement, a counter has been filed by the petitioner company before the Labour Court, stating that the payment of exgratia is a gesture of goodwill and hence the same cannot be demanded as a matter of right. The benefit under the scheme is enumerated in clause-6. Clause-6(d) of the Scheme speaks that the exgratia amount equivalent to 45 days (basic plus DA) for such completed years of service should be paid. It is admitted that the first respondent has completed 37 years of service and he is entitled for 45 days exgratia payment for each completed year of service. The quantum of monthly salary of Rs.3,765/- is also not disputed. But, it was only stated that the exgratia calculated by the management was correct and the first respondent is not entitled to compute the said exgratia of 45 days emoluments for each completed year of service by dividing the monthly wages of last drawn by 26. Multiplying factor applying the principles of payment of Gratuity Act for determining a day's wages is only disputed. The basis on which the management has calculated the exgratia amount was not at all stated before the Labour Court. It is

also not stated that the multiplying factor should be 30 days instead of 26 days. The simple case of the first respondent before the second respondent that he is entitled for exgratia payment of 45 days emoluments of every completed year of service divided by 26 days a month.

The first respondent submits that the last drawn wages of a month shall be divided by 26 days only, but not by 30 days as was made by the petitioner company. In support of his contention, the first respondent has relied on a Judgment of this Court in the case of **M/s.Azamjahi Mills, Warangal rep.by its General Manager Vs. The Industrial Tribunal-cum-Labour Court, Warangal and others,** decided by a Single Judge of this Court Hon'ble Mr.Justice Syed Shah Mohammed Quadri as His Lordship then was. The said case was also arose under the scheme introduced for voluntary retirement. The question that arose was with regard to the payment of compensation equivalent to 15 days wages for every completed year of service in addition to the eligibility for the gratuity as per the payment of Gratuity Act. While calculating the compensation for 15 days of every completed year of service, the management has taken 30 days a month instead of 26 days a month. Based on the Judgment of the Apex Court, it was held in the said case that a worker would get full month's wages not by remaining on duty for all the 30 days within a month but remaining on work and doing duty for only 26 days and the other extra holidays might make some marginal variation in the 26 working days but all the wage boards and wage fixing authorities or Tribunals in the country had always followed that pattern of fixation of wages by that methods of 26 working days. Ordinarily month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month. It was further held that:

> "It cannot be contended that the calculation of wages at 26 days per month under the Payment of Gratuity Act is because of the explanation. The Supreme Court construed 15 days wages to mean calculated on the basis of dividing the last drawn wages of a month by 26 and multiplying the same by 15.

> The mere fact that the management provides that the employee would be entitled to gratuity in addition to the compensation would make no difference for calculation of 15 days wages".

The said principle laid down in the aforesaid Judgment is squarely covers the contention of the first respondent. The second respondent rightly held that the management has wrongly calculated the last drawn monthly wages taking 30 days a month instead of 26 days. Therefore, there is an error in calculating the exgratia amount of 45 days emoluments for each completed year of 37 years service.

The learned counsel appearing for the writ petitioner submits that the application filed by the first respondent under Section 33-C(2) of Industrial Disputes Act before the Labour Court after a lapse of four years of his receiving compensation, is not maintainable and the Labour Court is not entitled to arrive the disputed amounts under Section 33-C(2) of the Industrial Disputes Act. Admittedly, the first respondent issued a notice on 6-9-1996 itself, demanding the payment of differential exgratia amount of Rs.31,447-80 Ps., but no reply was given to the notice issued by the first respondent and therefore he was constrained to file the said application before the Labour Court. Therefore, it cannot be said that the application filed by the first respondent before the Labour Court in the year 2000 is barred by limitation. Admittedly, Section 33-C(1) has no application. The first respondent has filed the application under Section 33-C(2) of the Industrial Disputes Act. As per the said provision, "the workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question has to be decided by the Labour Court". In the instant case, it is the specific case of the first respondent that there is an error in calculating the exgratia amount of 45 days last drawn monthly emoluments for each completed 37 years of service. Therefore, it is not a question of any interpretation or deciding the question of disputed amount.

The Judgment cited by the learned counsel for the petitioner in the case of **Executive Engineer, Penstock Fabrication and Erection Division, Cuddapah and others Vs. P.Seshagiri Rao and others** has no application to the facts of this case as there is no dispute with regard to the monthly wages payable to the first respondent. It is only the application of principle in calculating the daily wages taking into consideration of monthly wages divided by 26 days, but not by 30 days.

There is no settlement or agreement for calculating the daily wages. In the absence of any settlement or agreement, unless otherwise expressly provided, it would be on the basis of daily wages worked out by dividing the last drawn wages a month by 26, multiplying the same by 45 days for payment of exgratia. Therefore, I am of the opinion that the first respondent is entitled to the payment of exgratia amount for 45 days of emoluments for each completed year of 37 years service based on the calculation by dividing the monthly wages last drawn by him by 26 days. The said calculation is supported by the Judgment of Apex Court in the case of **Jeewanlal Ltd. Vs. Appellate Authority** and in the case of **Sri Digvijay Woollen Mills Vs. Mahendra P.Buch.** Therefore, the application filed by the first respondent was rightly allowed by the second respondent and the principle laid down in the aforesaid Judgment squarely covers the issue and the petitioner is liable to pay the said differential amount to the first respondent. I do not find any error or illegality in the order passed by the second respondent. There are no merits in the Writ Petition.

Accordingly, the Writ Petition is dismissed with costs.

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V.ESWARAIAH, J

Dt.29-09-2004.

Note:

L.R. Copy to be marked.

B/o

Shr.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

WRIT PETITION NO.14433 OF 2002

MEMORANDUM OF COSTS.

Stamp for Vakalatnama Rs. 5-00

Advocate's Fee Rs.5,000-00

(as per fee certificate filed by the

counsel for the respondent No.1)

Stamp on Vacate Stay Petition Rs. 2-00

To be paid by the petitioner to the respondent Rs.5,007-00

(Rupees five thousand and seven only) _____

Asst. Registrar.

(To be attached to the order dated 29-9-2004 made in W.P.No.14433 of 2002)

To

1. One fair copy to the Hon'ble Mr.Justice V.Eswaraiah (for His Lordship's kind perusal).
2. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam, Visakhapatnam District.
3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
4. The Secretary, A.P., Advocates Association Library, High Court Buildings, Hyderabad.
5. Two CD copies.
6. Two CCS., to G.P., for Labour, High Court Buildings, Hyderabad (OUT).
7. One spare copy.